

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Wednesday, September 5, 2012
10 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: August 22, 2012

RE: Closed Session of the Board to be held on September 5, 2012

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. M J BROTHERS, INC., 11-R2D5-1810 AND 1811

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. AA PORTABLE POWER CORPORATION, 11-R2D2-2771 THROUGH 2773
2. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
3. ACE AUTO WRECKERS, 12-R2D4-0428 THROUGH 0430

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4. ALLIED HEATING & AIR CONDITIONING CO., INC., 12-R1D5-1058 THROUGH 1059
5. MARK R. AMARAL DBA MARK AMARAL ROOFING, 11-R6D7-0691 AND 0692
6. AMERICAN MEDICAL RESPONSE DBA AMR, 11-R2D4-2460
7. A T & T, 10-R2D5-2395 AND 2396
8. A T & T CALIFORNIA, 12-R1D5-1151
9. JASWANT S. BAINS DBA JASWANT BAINS FARMS, 11-R2D1-0087 AND 0088
10. BANNER AUTO SALES, INC., DBA VICTORY AUTO DISMANTLER, 11-R6D7-0644 THROUGH 0646
11. BASIN EXCAVATING & EQUIPMENT, INC., 11-R1D2-1517 AND 1518
12. BAY VALLEY FOODS, INC., DBA DEL TACO, 11-R2D2-3080
13. BLACKBURN FARMING CO., INC., 10-R2D5-3065 AND 3066
14. BLUE CROSS BEAUTY PRODUCTS, 12-R4D3-1180
15. BORDER VALLEY TRADING LTD, 12-R2D4-0520 THROUGH 0524
16. BZ SERVICE STATION MAINTENANCE INC., 12-R2D1-0116
17. CALIFORNIA DAIRIES INC., 10-R2D4-2616
18. CERTIFIED COATING CO., 12-R2D3-0154
19. COVI CONCRETE CONSTRUCTION, INC., 11-R3D2-2094
20. CREATIVE STONE MFG. INC. DBA CORONADO STONE PRODUCTS, 12-R3D3-0446 AND 0447
21. CROP PRODUCTION SERVICES, INC., 12-R6D3-0561
22. DIAMOND REFRACTORY SERVICE, 11-R6D7-1913 THROUGH 1915
23. D & T FIBERGLASS INC., 10-R2D1-2609 THROUGH 2613
24. EQUITY EXTERIOR INC., 11-R3D1-3066

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25. GOLDEN ARCHES ENT. DBA McDONALD'S, 11-R2D3-3215
26. GOLDEN STATE UTILITY CO., 10-R2D5-2393 AND 2394
27. GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA, 11-R3D6-2717
28. GRANITE CONSTRUCTION COMPANY, 11-R5D1-1320
29. GRANITE CONSTRUCTION COMPANY, 11-R5D1-2784
30. GRANITE CONSTRUCTION COMPANY, 11-R5D1-2833
31. GRAUNSTADT ENTERPRISES DBA DELTA SCRAP & SALVAGE,
11-R2D2-2665
32. GLENNA HAVERCROFT, 12-R2D4-1011 THROUGH 1017
33. HAYWARD ELECTRIC COMPANY, 12-R3D3-1567 AND 1568
34. HCL CONSTRUCTION, 12-R1D5-1307 AND 1308
35. HEALTH BREADS INC. DBA OASIS BREADS, 11-R6D2-1712 THROUGH 1717
36. HERITAGE DAIRY, 11-R2D2-2666
37. IBLETO, INC. DBA IBLETO MEATS, INC., 10-R1D5-0477 AND 0478
38. INTERNATIONAL LINE BUILDERS, INC., 11-R1D2-1406 AND 1407
39. JOHN'S WELDING & REPAIRS, 10-R2D5-1548 AND 1549
40. JTP LIMITED, INC., DBA VJ MEMORIAL, 12-R3D6-0535
41. J & W WALKER FARMS, INC., 12-R2D3-0637
42. KANGAROOTER, INC., 11-R2D5-1414
43. KINDERS CUSTOM MEATS, 11-R2D2-2625 AND 2626
44. MICHAEL KRAGER DBA MICHAEL KRAGER CONTRACTING, 11-R6D7-1828
AND 1829
45. L3 COMMUNICATIONS CORPORATION, 12-R1D4-1477 AND 1478

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46. YING & KATHLEEN LAM DBA WESTSIDE APARTMENTS, 10-R2D1-2158 THROUGH 2164
47. LIGHTS OF AMERICA, 12-R3D6-0506 AND 0507
48. JAMES RICHARD MARSHALL DBA H.M. MARSHALL & SON, 12-R2D5-1065
49. MARSHALL'S MA INC., A DIV. OF TJX CO. INC., 12-R3D6-0064 AND 0065
50. McTEER PLANTING, 10-R2D5-3241
51. MILLER ENVIRONMENTAL INC., 12-R3D3-0354 AND 0355
52. NATURE'S HIGHLIGHTS INC., 12-R2D3-1800
53. NEVADA CO. CONSOLIDATED FIRE DISTRICT, 12-R2D3-1010
54. PATRIOT ENVIRONMENTAL SERVICES, INC., 11-R4D3-2617 AND 2618
55. PATTERSON VEGETABLE COMPANY, LLC, 12-R6D3-0761
56. PECK & HILLER COMPANY, 11-R1D3-1836
57. PHILLIPS ELECTRONICS NORTH AMERICA CORPORATION, 12-R3D6-0333
58. PROSCAPE LANDSCAPE CO., 11-R2D5-3296
59. RESTORATION HARDWARE, INC., 12-R1D5-0876 AND 0877
60. JUAN HERNANDEZ REYES DBA REYES DRYWALL CONSTRUCTION, 11-R2D1-2765
61. RE WEST BUILDERS INC., 11-R6D7-1558
62. SAN FRANCISCO FLOORING SPECIALISTS, DBA HY-VAC, 11-R1D4-2396
63. SAVE MART SUPERMARKETS DBA SAVE MART #602, 12-R2D3-0079
64. SEAN CLINES FRAMING, INC., 11-R2D5-2405
65. SIMAS FLOOR CO., INC DBA SIMAS FLOOR & DESIGN COMPANY, INC., 10-R2D1-3772 AND 3773
66. SOLANO GARBAGE COMPANY, 12-R2D2-0048 AND 0049

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67. SOUTH FEATHER WATER AND POWER, 12-R2D3-0776
68. SUNSWEET GROWERS INC., 09-R2D1-0765 AND 0766
69. SUPERIOR STUCCO & PLASTERING, 12-R4D3-0174
70. TEICHERT CONSTRUCTION, 09-R2D1-0397 AND 0398
71. THE LIVING DESERT, 12-R3D3-0530 THROUGH 0533
72. THOR EQUITIES, LLC., 11-R1D1-3099
73. TOM LEWIS RESTORATION & CONSULTING, INC., 10-R1D1-3736 AND 3737
74. T & S CONST CO INC DBA THOMAS SPINELLA CONSTR INC., 12-R2D3-1073 AND 1074
75. RAJBIR VIRDEE, 12-R2D1-0205
76. WATERPROOFING ASSOCIATES, INC., 11-R1D2-2604
77. WATERPROOFING ASSOCIATES, INC., 12-R1D2-0846 AND 0847
78. WHEELABRATOR SHASTA ENERGY CO., INC. 11-R2D1-0009 AND 0010
79. WILBUR RANCH, 11-R2D3-0152

ORDERS DISMISSING APPEALS:

1. ELK GROVE POWER SPORTS, INC., 11-R2D1-0472
2. P.F.L. CONTRACTING INC., 11-R1D2-2020

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. MOUNTAIN CASCADE, INC. 12-R2D3-9096

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2. POM WONDERFUL, 09-R2D5-1401 AND 1402

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

1. A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
2. ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480
3. AC TRANSIT, 08-R1D4-0135
4. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
5. ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
6. BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
7. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
8. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241
9. BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
10. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
11. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
12. CENTRAL VALLEY ENGINEERING & ASPHALT, INC. 08-R2D1 5001 AND 5002
13. COFFMAN SPECIALTIES, INC., 10-R3D3-3532
14. COMMERCIAL METAL FORMING, 09-R3D1-1592
15. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
16. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

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17. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
18. DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
19. DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
20. DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
21. DUKE PACIFIC, INC., 08-R3D3-574
22. ECO BAY SERVICES, INC., 10-R1D1-1233 THROUGH 1236
23. EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
24. EZ MIX, INC., 08-R4D3-1898
25. FORTUNA IRON WORKS 06-R2D3-4222
26. GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
27. HOME DEPOT, 10-R3D6-3284
28. HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
29. IRWIN INDUSTRIES, 08-R6D4-1454
30. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
31. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
32. LION RAISINS, INC., 08-R2D5-2253 AND 2254
33. MARINE TERMINALS, 08-R6D2-1920
34. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
35. NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
36. ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
37. OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
38. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864

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39. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
40. POUK & STEINLE, INC., 09-R3D3-0491
41. ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
42. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
43. SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-3128 THROUGH 3131
44. SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
45. SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
46. SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
47. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
48. SMUD, 08-R2D1-4887 THROUGH 4889
49. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
50. STAFFCHEX, 10-R4D3-2456 THROUGH 2458
51. SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
52. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
53. A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459 AND 0460
54. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 10-R5D1-3029

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

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SUPERIOR COURT:

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047
(07-R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
18. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)

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19. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
20. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
21. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)

COURT OF APPEAL:

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

PERSONNEL: *(Issues regarding staff.)*

Any matter not completed at this Closed Session may be continued to subsequent meetings.